

with the Title V regulatory authority, you decide to proceed with the reclamation project, then you and the Title V regulatory authority must concur in the following determinations:

(1) You must concur in a determination of the limits on any coal refuse, coal waste, or other coal deposits which can be extracted under the part 707 exemption or counterpart State/Indian Tribe laws and regulations.

(2) You must concur in the delineation of the boundaries of the AML project.

(c) *Documentation.* You must include in the AML case file:

(1) The determinations made under paragraphs (a) and (b) of this section;

(2) The information taken into account in making the determinations; and

(3) The names of the parties making the determinations.

(d) *Special requirements.* For each project, you must:

(1) Characterize the site in terms of mine drainage, active slides and slide-prone areas, erosion and sedimentation, vegetation, toxic materials, and hydrologic balance;

(2) Ensure that the reclamation project is conducted in accordance with the provisions of 30 CFR subchapter R;

(3) Develop specific-site reclamation requirements, including performance bonds when appropriate in accordance with State procedures; and

(4) Require the contractor conducting the reclamation to provide prior to the time reclamation begins applicable documents that clearly authorize the extraction of coal and payment of royalties.

(e) *Limitation.* If the reclamation contractor extracts coal beyond the limits of the incidental coal specified in paragraph (b)(1) of this section, the contractor must obtain a permit under Title V of SMCRA for such coal.

[64 FR 7483, Feb. 12, 1999]

PART 875—NONCOAL RECLAMATION

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AUTHORITY: 30 U.S.C. 1201 *et seq.*, as amended.

SOURCE: 47 FR 28596, June 30, 1982, unless otherwise noted.

§ 875.1 Scope.

This part establishes land and water eligibility requirements and for noncoal reclamation.

§ 875.10 Information collection.

The collection of information contained in part 875 have been approved by the Office of Management and Budget under 44 U.S.C. 3501 *et seq.* and assigned clearance number 1029–0103. The information will be used to determine if noncoal reclamation is being accomplished according to legislative mandate. Response is required to obtain a benefit in accordance with Public Law 95–87. Public reporting burden for this information is estimated to average 32 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing the burden, to the Office of Surface Mining Reclamation and Enforcement, Information Collection Clearance Officer, room 640 N.C., 1951 Constitution Avenue NW., Washington, DC 20240 and the Office of Management and Budget, Paperwork Reduction Project (1029–0103), Washington, DC 20503.

[59 FR 28172, May 31, 1994]

§ 875.11 Applicability.

The provisions of this part apply to all reclamation projects on lands or water mined or affected by mining of

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minerals and materials other than coal and are to be carried out with money from the Fund and administered by a State or Indian tribe under an approved reclamation program according to part 884 of this chapter.

§ 875.12 Eligible lands and water prior to certification.

Noncoal lands and water are eligible for reclamation if:

- (a) They were mined or affected by mining processes;
- (b) They were mined and left or abandoned in either an unreclaimed or inadequately reclaimed condition prior to August 3, 1977;
- (c) There is no continuing responsibility for reclamation by the operator, permittee, or agent of the permittee under statutes of the State or Federal Government or by the State as a result of bond forfeiture. Bond forfeiture will render lands or water ineligible only if the amount forfeited is sufficient to pay the total cost of the necessary reclamation. In cases where the forfeited bond is insufficient to pay the total cost of reclamation, monies sufficient to complete the reclamation may be sought under parts 886 or 888 of this chapter;
- (d) The reclamation has been requested by the Governor of the State or equivalent head of the Indian tribe; and
- (e) The reclamation is necessary to protect the public health, safety, general welfare, and property from extreme danger of adverse effects of noncoal mining practices.

[59 FR 28172, May 31, 1994]

§ 875.13 Certification of completion of coal sites.

(a) The Governor of a State, or the equivalent head of an Indian tribe, may submit to the Secretary a certification of completion expressing the finding that the State or Indian tribe has achieved all existing known coal-related reclamation objectives for eligible lands and waters pursuant to Section 404 of the Act (30 U.S.C. 1234), or has instituted the necessary processes to reclaim any remaining coal related problems. In addition to the above finding, the certification of completion shall contain:

(1) A description of both the rationale and the process utilized to arrive at the above finding for the completion of all coal-related reclamation pursuant to Section 403(a) (1) through (5).

(2) A brief summary and resolution of all relevant public comments concerning coal-related impacts, problems, and reclamation projects received by the State or Indian tribe prior to preparation of the certification of completion.

(3) A State or Indian tribe agreement to acknowledge and give top priority to any coal-related problem(s) that may be found or occur after submission of the certification of completion and during the life of the approved abandoned mine reclamation program.

(b) After review and verification of the information contained in the certification of completion, the Director shall provide notice in the FEDERAL REGISTER and opportunity for public comment. After receipt and evaluation of all public comments and a determination by the Director that the certification is correct, the Director shall concur with the certification and provide final notice of such concurrence in the FEDERAL REGISTER. This concurrence shall be based upon the State's or Indian tribes commitment to give top priority to any coal problem which may thereafter be found or occur.

(c) Following concurrence by the Director, a State or Indian tribe may implement a noncoal reclamation program pursuant to provisions in Section 411 of SMCRA.

[59 FR 28172, May 31, 1994]

§ 875.14 Eligible lands and water subsequent to certification.

(a) Following certification by the State or Indian tribe of the completion of all known coal projects and the Director's concurrence in such certification, eligible noncoal lands, waters, and facilities shall be those—

(1) Which were mined or processed for minerals or which were affected by such mining or processing, and abandoned or left in an inadequate reclamation status prior to August 3, 1977. In determining the eligibility under this subsection of Federal lands, waters, and facilities under the jurisdiction of the Forest Service or Bureau of Land

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Management, in lieu of the August 3, 1977, date, the applicable date shall be August 28, 1974, and November 26, 1980, respectively; and

(2) For which there is no continuing reclamation responsibility under State or other Federal laws.

(b) If eligible coal problems are found or occur after certification under § 875.13, a State or Indian tribe must address the coal problem utilizing State or Indian tribe share funds no later than the next grant cycle, subject to the availability of funds distributed to the State or Indian tribe in that cycle. The coal project would be subject to the coal provisions specified in Sections 401 through 410 of SMCRA.

[59 FR 28172, May 31, 1994]

§ 875.15 Reclamation priorities for noncoal program.

(a) This section applies to reclamation projects involving the restoration of lands and water adversely affected by past mineral mining; projects involving the protection, repair, replacement, construction, or enhancement of utilities (such as those relating to water supply, roads, and other such facilities serving the public adversely affected by mineral mining and processing practices); and the construction of public facilities in communities impacted by coal or other mineral mining and processing practices.

(b) Following certification pursuant to § 875.13, the projects and construction of public facilities identified in paragraph (a) of this section shall reflect the following priorities in the order stated:

(1) The protection of public health, safety, general welfare and property from the extreme danger of adverse effects of mineral mining and processing practices;

(2) The protection of public health, safety, and general welfare from the adverse effects of mineral mining and processing practices; and

(3) The restoration of land and water resources and the environment previously degraded by the adverse effects of mineral mining and processing practices.

(c) Enhancement of facilities or utilities shall include upgrading necessary to meet local, State, or Federal public

health or safety requirements. Enhancement shall not include, however, any service area expansion of a utility or facility not necessary to address a specific abandoned mine land problem.

(d) Notwithstanding the requirements specified in paragraph (a) of this section, where the Governor of a State or the equivalent head of an Indian tribe, after determining that there is a need for activities or construction of specific public facilities related to the coal or minerals industry in States or on Tribal lands impacted by coal or minerals development, submits a grant application as required by paragraph (d) of this section and the Director concurs in such need, as set forth in paragraph (e) of this section, the Director may grant funds made available under section 402(g)(1) of the Act, 30 U.S.C. 1232, to carry out such activities or construction.

(e) To qualify for funding pursuant to the authority in paragraph (c) of this section, a State or Indian tribe must submit a grant application that specifically sets forth:

(1) The need or urgency for the activity or the construction of the public facility;

(2) The expected impact the project will have on the coal or minerals industry in the State or Indian tribe;

(3) The availability of funding from other sources and, if other funding is provided, its percentage of the total costs involved;

(4) Documentation from other local, State, and Federal agencies with oversight for such utilities or facilities regarding what funding resources they have available and why this specific project is not being fully funded by their agency;

(5) The impact on the State or Indian tribe, the public, and the minerals industry if the activity or facility is not funded;

(6) The reason why this project should be selected before a priority project relating to the protection of the public health and safety or the environment from the damages caused by past mining activities; and

(7) An analysis and review of the procedures used by the State or Indian tribe to notify and involve the public in this funding request and a copy of

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all comments received and their resolution by the State or Indian tribe.

(f) After review of the information contained in the application, the Director shall prepare a FEDERAL REGISTER notice regarding the State's or Indian tribe's submission and provide for public comment. After receipt and evaluation of the comments and a determination that the funding meets the requirements of the regulations in this part and is in the best interests of the State or Indian tribe AML program, the Director shall approve the request for funding the activity or construction at a cost commensurate with its benefits towards achieving the purposes of the Surface Mining Control and Reclamation Act of 1977.

[59 FR 28173, May 31, 1994]

§ 875.16 Exclusion of certain noncoal reclamation sites.

Money from the Fund shall not be used for the reclamation of sites and areas designated for remedial action pursuant to the Uranium Mill Tailings Radiation Control Act of 1978 (42 U.S.C. 7901 *et seq.*) or that have been listed for remedial action pursuant to the Comprehensive Environmental Response Compensation and Liability Act of 1980 (42 U.S.C. 9601 *et seq.*).

[59 FR 28173, May 31, 1994]

§ 875.17 Land acquisition authority—noncoal.

The requirements specified in Parts 877 (Rights of Entry) and 879 (Acquisition, Management and Disposition of Lands and Water) shall apply to a State's or Indian tribe's noncoal program except that, for purposes of this section, the references to coal shall not apply. In lieu of the term *coal*, the word *noncoal* should be used.

[59 FR 28173, May 31, 1994]

§ 875.18 Lien requirements.

The lien requirements found in Part 882—Reclamation on Private Land shall apply to a State's or Indian tribe's noncoal reclamation program under Section 411 of the Act, except that for purposes of this section, references made to coal shall not apply.

In lieu of the term *coal*, the word *noncoal* should be used.

[59 FR 28173, May 31, 1994]

§ 875.19 Limited liability.

No State or Indian tribe shall be liable under any provision of Federal law for any costs or damages as a result of action taken or omitted in the course of carrying out an approved State or Indian tribe abandoned mine reclamation plan. This section shall not preclude liability for costs or damages as a result of gross negligence or intentional misconduct by the State or Indian tribe. For purposes of the preceding sentence, reckless, willful, or wanton misconduct shall constitute gross negligence or intentional misconduct.

[59 FR 28173, May 31, 1994]

§ 875.20 Contractor responsibility.

To receive AML funds for noncoal reclamation, every successful bidder for an AML contract must be eligible under 30 CFR 773.15(b)(1) at the time of contract award to receive a permit or conditional permit to conduct surface coal mining operations. Bidder eligibility must be confirmed by OSM's automated Applicant/Violator System for each contract to be awarded.

[59 FR 28173, May 31, 1994]

PART 876—ACID MINE DRAINAGE TREATMENT AND ABATEMENT PROGRAM

Sec.

876.1 Scope.

876.10 Information collection.

876.12 Eligibility.

876.13 Plan content.

876.14 Plan approval.

AUTHORITY: 30 U.S.C. 1201 *et seq.*, as amended.

SOURCE: 59 FR 28174, May 31, 1994, unless otherwise noted.

§ 876.1 Scope.

This part establishes the requirements and procedures for the preparation, submission and approval of State or Indian tribe Acid Mine Drainage Treatment and Abatement Programs.